IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Bail Appl..No. 4925 of 2007()

CRMP.88/2007 of DISTRICT COURT, KOTTAYAM
CRIME NO.13/06 OF ERATTUPETTA EXCISE RANGE

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: PETITIONER

BALAKRISHNAN, S/O. KURUPPASWAMY,
ATTUPURAMPOKU, NEAR TEAKOY ESTATE,
CHAMAPPARA KARA, POONJAR VADAKKEKKARA VILLAGE,
KOTTAYAM.

BY ADV. SRI.SEBASTIAN DAVIS
SRI.P.V.JYOTHI PRASAD

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING EXCISE INSPECTOR IN
CHARGE ERATTUPETTA.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4925 of 2007

Dated this the 23rd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. He along with co-accused faces the allegation that 800 ml of arrack entrusted by the petitioner to the co-accused was found in the possession of co-accused by the excise official on 3.12.06. Accused No.1 was arrested. The complicity of the petitioner was revealed at the time of detection itself. The seizure mahazar as well as the occurrence report do show the name of both the accused persons. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Solely on the basis of the statement of the 1st accused, the petitioner has been implicated. The information allegedly furnished by the 1st accused was not verified. The investigator has not taken any steps to conduct any search in the premises of the petitioner to ascertain whether the petitioner was in fact responsible for the offences committed by the 1st accused. In these circumstances, anticipatory bail may be granted to the petitioner, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that satisfactory indications have been collected. There is no reason to assume that the 1st accused gave a false statement. The present indications clearly point to the culpability of the petitioner. The petitioner has to be interrogated for an appropriate, efficient and expeditious investigation. There are no circumstances justifying the grant of anticipatory bail to the petitioner, it is submitted.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor . Of course I am dissatisfied that no further investigation to establish the complicity of the petitioner has been undertaken by the investigators so far. But that inadequacy in investigation does not and cannot at all deliver any advantage to the petitioner. I find merit in the submission that the petitioner has to be interrogated. It is for the petitioner to appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. I find no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the

Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-